Civil Misc. Writ Petition No. 1647 of 2001 (S/S)
(Old No. 34237 of 99)

Sukhdev Prasad & Two ors. …… Petitioners.

Versus

Additional Director, Animal
Husbandry Department, Gopeshwar
Chamoli & two Ors. …….. Respondents

Hon'ble P.C. Verma, J.

Heard learned counsel for the petitioners as well as learned Standing Counsel.

The petitioners were working on daily wages prior to 24.12.1992 as Class-IV employees. A selection Committee was constituted to regularize the daily wagers working as Class-IV employees against the vacant Class-IV posts. In view of the Government Order dated 09.10.1991, the Committee, vide letter dated 24.12.1992, recommended for regularization of the petitioners on Class-IV posts. This was accepted by the Appointing Authority i.e. Deputy Director, Animal Husbandry, Garhwal Division, Pauri on 28.12.1992 and pursuant to this, appointment letters were issued to the petitioners by the District Live Stock Officer, Pauri. The Services of the petitioners were terminated by the District Live Stock Officer, vide order dated 19.9.1995. Petitioners challenged their termination orders by filing Writ Petition No. 35632 of 1995, which was allowed by the Allahabad High Court holding that the District Live Stock Officer was not the competent authority to pass termination order as he was not appointing authority of the petitioner. The Deputy Director of Animal Husbandry, Garhwal Division, Parui was the appointing authority and he was competent to pass such order. Therefore petitioners were reinstated and paid salary.

By the impugned order dated 30.06.1999 contained in Annexure Nos. 8,9 & 10 to the writ petition, the services of the petitioners have been terminated by the Deputy Director, Animal Husbandry Garhwal Division, Pauri on the ground that the appointment of the petitioners were made without there being any vacant post.

The learned counsel for the petitioners has annexed a chart of vacancies of the posts of Class-IV. In Animal Husbandry Department, Garhwal Division, Pauri. The number of vacant posts are shown to be 25. It has specifically been stated in Para-18 of the writ petition that there were 25 vacant posts in the Garhwal Division. The averments made in para-18 of the writ petition have been admitted in the counter affidavit by the respondents. It has only been stated in the counter affidavit that there was no post vacant in District Pauri Garhwal.

Since there existed 25 vacancies in Garhwal Division and appointment was made by the Deputy Director, Animal Husbandry, Garhwal Division, Pauri (Garhwal), the petitioners could have been transferred very well to any other district of the Garhwal Division, where the vacancy existed.

Learned counsel for the petitioners submitted that two persons were appointed alongwith the petitioners. They had been transferred to other place in Garhwal Division, while services of the petitioners have been terminated. That averment has not been denied by the respondents.

The reason shown is that the services of the petitioners have been terminated as they were appointed without their being any vacancy is patently erroneous in view of the facts noticed above. Thus, the termination order suffers from non-application of mind and it is liable to be quashed.

A writ of certiorari is issued quashing the impugned order dated 30.06.1999, contained in Annexure Nos. 8, 9 & 10 to the writ petition. The petitioners shall be treated in services and shall get all consequential benefits.

The writ petition is allowed accordingly.

Sd/-

20.09.2001